

Serial No.02
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A.No.9/2023 with
Crl.M.C.No.32/2023

Date of Order: 01.06.2023

Grenath Ch. Marak

Vs.

State of Meghalaya

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Appellant : Mr. S.D. Upadhaya, Legal Aid Counsel with
Mrs. A. Synrem, Adv

For the Respondent : Mr. B. Bhattacharjee, AAG with
Mr. S. Sengupta, Addl.PP
Mr. J.N. Rynjah, GA

i) Whether approved for reporting in Law journals etc.: Yes

ii) Whether approved for publication in press: Yes/No

JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

This appeal has been carried some 10 years after the conviction of the appellant.

2. Since it appeared that the appellant was from the economically weaker section of society and not literate, sufficient latitude was shown in condoning the delay in receiving the appeal. At any rate, when it is a person's liberty at stake, courts are bound to be lenient in condoning the delay.

3. The appellant has been convicted under Section 302 read with Sections 376A and 201 of the Penal Code, 1860. The first ground that the appellant urges is that Section 376A of the Penal Code could not have been invoked in this case since such provision was introduced by an amendment of 2013, whereas the incident complained of in the present case was of July 10, 2010.

4. Since the appellant has been convicted, inter alia, under Section 302 of the Penal Code, even if Section 376A had been wrongly invoked, it would not affect the matter since the anomaly can be corrected at this stage.

5. The further ground raised on behalf of the appellant is that no statement made has been recorded by the investigating officer culminating in the appellant allegedly leading the investigating agency to where the body of the minor girl was found. The final ground urged on behalf of the appellant is that the trial court failed to explain the testimonies of the prosecution witnesses to the appellant or elicit any response from the appellant in such regard. The appellant says that in course of the appellant's examination under Section 313 of the Code of Criminal Procedure, 1973, questions were put by the court to the appellant whose answers have been self-incriminating.

6. The first information report in this case was lodged by the father of a 12-year-old girl on July 13, 2010 at the Garobadha Investigating Centre, following which a case was recorded at Tura Police Station. The FIR revealed that the father of the victim had left home on July 10, 2010 and was followed thereafter by his wife who went to attend the Jhum cultivation. When both the husband and wife returned late in the evening, they found their 12-year-old daughter missing and made enquiries that evening and the following day and discovered only the day after that some persons had seen the missing girl accompanying the appellant herein on July 10, 2010. The FIR also revealed that in their attempt to find out the girl, the local villagers went to the appellant's native village at Gildinggre to enquire of him, "but on the way at Okapara the villagers caught him and brought him to the village at Balalgre." The FIR proceeded to record that the appellant confessed that on July 10, 2010, he had taken the girl and raped her before killing her by strangulation. The FIR also claimed that the appellant had asserted that he took the dead body of the girl to a jungle and threw it after tying her hands behind her back with a *gamcha*.

7. In course of the trial, several of the prosecution witnesses, including PW-3, asserted that the appellant herein had confessed before such witnesses and several other villagers as indicated in the FIR. Indeed,

it also came out from the evidence that the appellant did not return home on July 10, 2010, the day the victim went missing and the appellant's wife testified to such effect. The other important evidence adduced on behalf of the prosecution was that in the presence of several of the witnesses called by the prosecution, the appellant herein led the police to where the body of the victim was thrown, whereupon the body was discovered and sent for post-mortem examination. The medical report revealed that the victim had been raped and was also subjected to unnatural sex.

8. It is not necessary to dwell elaborately on the rest of the evidence, particularly since the other parts of the evidence may not have been summarised and put to the appellant in course of his examination under Section 313 of the Code by the trial court.

9. However, what is evident from the recording of such examination under Section 313 of the Code is that the evidence of the wife of the appellant to the effect that the appellant did not return home on July, 10 or thereafter, was put to the appellant and the appellant, initially claimed that he was not at home, but later suggested that his wife may not have spoken the truth. The trial court pointedly referred to the evidence of PW-3 to the effect that after three days of search for the missing girl and the appellant by the villagers, the villagers were able to

nab the appellant. The appellant's response was: "It is a fact that I was caught."

10. The trial court further put it to the appellant that PW-3 had testified that the appellant had confessed that he had killed the girl before PW-3 and the villagers. The appellant denied that he made such a confession. The trial court then proceeded to take out another piece of the evidence from the testimony of PW-3 to ask the appellant whether the appellant had promised to show the dead body of the girl to the villagers. Before adverting to the appellant's response to such question, it must be recorded that PW-3 did testify that the appellant herein led the police and the villagers to where the dead body could be found in the jungle.

11. The appellant confirmed to the trial judge that he showed where the dead body was and that at such time the police had accompanied him.

12. Through another question from the trial court in connection with the post-mortem report, the trial court sought to elicit information from the appellant herein regarding the possible murder of the girl. The appellant's response to question No.13 put in such regard was as follows:

"The Post Mortem report is wrong and the girl died of injuries caused by a boulder falling on her chest, when I was lifting the boulder. This incident happened in the Jhum. I got scared and threw the dead body in the jungle."

13. The further information that the appellant herein proffered to the trial court was that the girl had died at about 1:30 pm and the

appellant threw the dead body in the jungle at about 7 pm. He also claimed that after he was caught by the villagers at Okapara village, he wanted to tell them about the circumstances in which the girl met her death, but he could not do so because he was beaten up and apparently tortured by the villagers.

14. To deal, first, with the anomaly in the judgment of conviction dated July 4, 2013 and the consequent sentence pronounced on July 24, 2013, it must be recorded that no case under Section 376A of the Penal Code could have been made out and the reference to such provision was palpably erroneous on the part of the trial court since even the charge-sheet which was forwarded to the court on July 14, 2010 did not refer to Section 376A, but referred, instead, to Sections 376, 377, 302 and 201 IPC.

15. As to the basis for convicting the appellant herein, first there was the assertion by several persons as to the appellant's confession. Next, there was the appellant's categorical statement that he led the police to the body of the victim. Finally, the appellant claimed that he was the only person present with the victim at the time the victim met her death, but made no attempt to establish how the victim met her death. In any event, the medical report did not corroborate the appellant's version that the victim was hit by a large boulder and was killed thereby.

16. If, indeed, a heavy boulder landing on the chest of the victim had killed the victim, the post-mortem report would have revealed the same. Further, not only did the post-mortem report completely discredit the appellant's version of how the victim met with her death, such medical examination report found that the victim had been subjected to sex and even unnatural sex. Since the victim was a minor, any sex with the victim would have amounted to a statutory rape and the consequence would be conviction under Section 376 of the Penal Code. Accordingly, the conviction of the appellant under Section 376A of the Penal Code is annulled and set aside and the conviction in such regard as indicated to be under Section 376 of the Penal Code.

17. The body of the victim in this case was found in a jungle, which may be considered to be a remote, even though a somewhat accessible place. When a person who was last seen with the would-be victim leads the police or other persons to a place from where the body of the victim is discovered, it is incumbent on such person to indicate the circumstances in which he came to know of the location of the body and unless a credible explanation is proffered, an adverse inference may be drawn against him.

18. Further, when the appellant herein admitted that he was alone with the victim when the victim met her death, it was incumbent on the

appellant to prove how the victim came to meet her death. In such regard, the appellant has failed miserably since the appellant's assertion that a large boulder fell on the chest of the victim and killed her is belied by the post-mortem examination conducted on the body of the victim. To boot, the medical report referred to the victim having been raped and subjected to unnatural sex. In the circumstances and the evidence that was presented before the trial court, it was perfectly in order for the trial court to arrive at a conclusion that the appellant, in the absence of a satisfactory explanation, must have committed the offence. It is also the fairly admitted position that the appellant attempted to conceal the evidence by throwing away the dead body. As a consequence, there does not appear to be any reason to interfere with the impugned judgment of conviction or the consequent sentence.

19. It may be recorded in this context that Section 313 of the Code of 1973 casts an obligation on the trial judge to examine the accused and explain and indicate to the accused any circumstances appearing in the evidence against him. However, notwithstanding such duty, the provision empowers the court, at any stage and without any previous warning, to put questions to the accused that the court considers necessary. Indeed, at the time that the summary of the evidence against the accused is presented

by the trial court to the accused, the trial court is also authorised to question the accused “generally on the case.”

20. Thus, the trial court is not a kind of a tape-recorder at the end of the trial to merely summarise the evidence adduced against the accused by the prosecution and seek the response of the accused thereto. Both, at any stage of the trial and at such stage of examination under Section 313 of the Code, it is open to the court to put questions to the accused to ascertain the circumstances pertaining to the case.

21. It must also be acknowledged, in the same breath, that when there is some material which comes to light in course of the oral testimonies of the prosecution witnesses and the same is not presented to the accused in course of the accused being examined under Section 313 of the Code, there is an element of prejudice that the accused may suffer. This is more so when the accused may be unlettered and may not be able to follow the drift of the evidence, despite being present in court.

22. It is for such reason that Section 313 of the Code has been judicially interpreted to imply that all incriminating material against an accused must be presented to the accused by the trial court for the accused to be able to deal with the same and attempt to proffer a plausible explanation therefor. But once the accused is presented with such opportunity, if there is something which appears to be within the special

knowledge of the accused, a mere denial of the material against the accused would not suffice without the accused discharging his burden in the circumstances, depending on the state of evidence.

23. In the present case, it was perfectly possible to construct a judgment of conviction against the appellant herein based only on the material put to him in course of his examination under Section 313 of the Code and his response thereto. Indeed, as it appears from the impugned judgment of July 4, 2013, much weightage was given by the trial court to the effect that the appellant's wife indicated that the appellant had also gone missing from his home from July 10, 2010 and may not have returned home till he was apprehended by the villagers at Okapara. Doubtless, the state of mind of the appellant herein as revealed from his immediate conduct, would have also weighed with the trial court. Here was a man who was last seen with a minor victim and was not seen for the next three days when the victim also remained untraced. He did not return home or to his native village and was discovered somewhere else.

24. It is possible that the appellant's conduct was completely honourable and that the victim met an accidental death as described by the appellant. It is equally understandable that the appellant may have been scared and, as a reaction thereto, may have attempted to do away with the body of the victim and lie underground for some time. However, the

appellant ought to have been able to reconstruct the happenings or the circumstances that led to the accidental death of the victim and any evidence in such regard could have been looked into and verified.

25. On the contrary, since the post-mortem examination of the victim proved that she had met an unnatural death after having been raped and subjected to unnatural sex, it was for the appellant herein to demonstrate how the injuries came to be suffered by the victim. In the appellant's abject failure to furnish any plausible explanation, coupled with the indication of the guilty mind of the appellant as he lay low, the element of guilt could be sufficiently inferred from the appellant's immediate conduct. Add to this, the fact that the appellant led the police and others to the spot from where the body of the victim was discovered and the appellant admitted to having done so, it was established beyond reasonable doubt that it was the appellant who had committed the offences of rape and murder of the victim.

26. Finally, even if some credence is to be given to the appellant's assertion that the victim met with an accidental death and the appellant was so taken aback by the turn of events that he thought it best to throw the body in the jungle and lie low, the one act of the appellant that is a complete gave-away is the fact that the appellant tied the hands of the victim behind her with a *gamcha*. Such an act would be more in tune with

preventing a would-be victim from resisting strangulation. At any rate, the fact that the girl's hands were tied with a *gamcha*, which the appellant apparently claimed to have done, would be completely inconsistent with the scared reaction of a person whose companion meets with an accidental death.

27. Further, irrespective of what the evidence was as to anyone having noticed the girl accompanying the appellant, it was the appellant's admission that he was with the girl at the time that the girl met with her death. Since the appellant had no explanation as to how the girl came to be raped or subjected to unnatural sex and the appellant's version of the cause of death was belied by the medical report, there was no room for any possible doubt that it was the appellant who had lured the girl and committed rape on her before killing her and doing away with her body.

28. In such circumstances, the judgment of conviction of July 4, 2013 is modified by finding the appellant guilty under Sections 302 and 201 of the Penal Code together with Section 376 thereof, instead of Section 376A as erroneously referred to by the trial court.

29. As a consequence of the error in the judgment of conviction and upon Section 376A of the Penal Code being found inapplicable, the order of the punishment is modified to life imprisonment under Section 302 of the Code together with life imprisonment under Section 376 of the Penal

Code, both sentences to run concurrently. The enhanced sentence of life imprisonment implying till the rest of the natural life of the appellant herein as passed in terms of Section 376A of the Penal Code stands set aside.

30. CrI.A.No.9 of 2023 is otherwise dismissed as being completely devoid of merits.

31. CrI.M.C.No.32 of 2023 is disposed of.

32. Let an authenticated copy of this judgment and order be immediately made available to the appellant free of cost.

(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice



Meghalaya
01.06.2023
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